

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

RESOLUTION NO. R5-2009-XXX

NON-REGULATORY AMENDMENTS TO THE WATER QUALITY CONTROL PLAN
FOR
THE SACRAMENTO RIVER AND SAN JOAQUIN RIVER BASINS
TO CORRECT EDITING ERRORS AND UPDATE LANGUAGE

WHEREAS, the California Regional Water Quality Control Board, Central Valley Region (hereafter Central Valley Water Board) finds that:

1. In 1975 the Central Valley Water Board adopted the Water Quality Control Plan for the Sacramento River and San Joaquin River Basins (Basin Plan), which has been amended occasionally.
2. The Basin Plan may be amended in accordance with the California Water Code Section 13240, et seq.
3. California Water Code section 13241 authorizes the Central Valley Water Board to establish water quality objectives and California Water Code section 13242 sets forth the requirements for a program for implementation for achieving water quality objectives.
4. The Federal Clean Water Act (CWA) section 303 requires the Central Valley Water Board to develop water quality objectives which are sufficient to protect beneficial uses designated for each water body found within its region.
5. The CWA section 303 requires the Central Valley Water Board to review the Basin Plan at least every three years and when appropriate modify water quality objectives or beneficial uses in the Basin Plan.
6. The Basin Plan is the basis for regulatory actions by the Regional Water Boards to protect waters of the state and assure compliance with the California Water Code. Therefore, errors in the text should be corrected and the language should be updated to assure that stakeholders are aware of the applicable regulations.
7. The Central Valley Water Board has prepared draft amendments which correct an error in the beneficial uses of the Marsh Creek and Marsh Creek Reservoir, and correct an error in the water quality objectives for boron. The draft amendments will also update references in the Basin Plan to the State Water Board's Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary, integrate into the Basin Plan the State Water Board's Water Quality Enforcement Policy, the Nonpoint Source Implementation and Enforcement Policy, and the Compliance Schedule Policy, revise the waiver discussion to be consistent with the current California Water Code, and make other language updates.

8. The amendments are corrections and updates and the Board is not revising or adopting water quality objectives, so the Water Board is not required to consider the factors in Water Code section 13241. However, there are no costs associated with implementing the proposed amendment, nor are any of the other section 13241 factors relevant to the proposed amendments.
9. The Central Valley Water Board finds that the draft amendments are corrections of typographical errors and updates and do not have scientific elements requiring independent, external scientific peer review in accordance with Health and Safety Code Section 57004.
10. The Central Valley Water Board finds that the proposed amendments are consistent with the State Water Resources Control Board (State Water Board) Resolution No. 68-16, in that the changes to water quality objectives (i) consider maximum benefit to the people of the state, (ii) will not unreasonably affect present and anticipated beneficial use of waters, and (iii) will not result in water quality less than that prescribed in policies, and that the proposed amendment is consistent with the federal Antidegradation Policy (Code of Federal Regulations, title 40, section 131.12). The proposed amendments correct typographical errors and updates language in the Basin Plan. The amendments will not cause impacts on water quality.
11. The regulatory action proposed meets the "Necessity" standard of the Administrative Procedures Act, Government Code, section 11353, subdivision (b).
12. The basin planning process has been certified by the Resources Agency as an exempt regulatory program because its process adequately fulfills the purposes of the California Environmental Quality Act (CEQA). The Central Valley Water Board is therefore exempt from CEQA's requirements to prepare an environmental impact report, negative declaration, or initial study (Public Resources Code, section 21000 et seq.) for the proposed amendment. Instead, the Central Valley Water Board prepares substitute environmental documents under the certified regulatory program. Central Valley Water Board staff has prepared the required documentation for adoption of a Basin Plan Amendment, including a completed environmental checklist and written report (Staff Report) prepared for the Board (California Code of Regulations, title 23, section 3777). However, these amendments are exempt from CEQA because they are purely ministerial, will not affect the environment and are not a "project." (Pub. Res. Code § 21080, subdivision (b)(1); Cal. Code of Regs., tit. 14, §§ 15060, subdivision (c) and 15378, subdivision (b)(5).)
13. Central Valley Water Board staff has prepared a staff report dated March 2009. The staff report included a description of the proposed amendments. No environmental impacts were identified because the proposed amendments correct errors and update language; therefore, no alternatives or mitigation measures are proposed.
14. Central Valley Water Board staff has circulated a Notice of Public Hearing, Notice of Filing, a written staff report, and environmental checklist, and a draft proposed amendment to interested individuals and public agencies, including persons having

special expertise with regard to the environmental effects involved with the proposed amendment, for review and comment in accordance with state and federal environmental regulations (California Code of Regulations, title 23, section 3775; Code of Federal Regulations, title 40, sections 25 and 131).

15. Responses to all comments have been prepared and the draft amendment, staff report and environmental checklist have been revised as appropriate in response to comments.
16. The Central Valley Water Board held a public hearing on xx August 2009, for the purpose of receiving testimony on the draft Basin Plan amendment. Notice of the public hearing was sent to all interested persons and published in accordance with California Water Code section 13244.
17. Based on the record as a whole, including the draft Basin Plan amendments, the environmental document, accompanying written documentation, and public comments received, the Central Valley Water Board concurs with staff's conclusion that the amendments will result in no effect on the environment and, therefore, no mitigation measures are necessary.
18. A Basin Plan amendment must be approved by the State Water Board, Office of Administrative Law (OAL), and the U. S. Environmental Protection Agency (USEPA). The proposed amendment becomes effective under State law after OAL approval and becomes effective under the federal Clean Water Act after USEPA approval.
19. The Central Valley Water Board finds that the amendment to the Basin Plan was developed in accordance with California Water Code section 13240, et seq.

THEREFORE BE IT RESOLVED:

1. Pursuant to California Water Code section 13240, et seq., the Central Valley Water Board, after considering the entire record, including oral testimony at the hearing, hereby approves the staff report and adopts the amendment to the Basin Plan as set forth in Attachment 1.
2. The Executive Officer is directed to forward copies of the Basin Plan amendment to the State Water Board in accordance with the requirements of California Water Code section 13245.
3. The Central Valley Water Board requests that the State Water Board approve the Basin Plan amendment in accordance with the requirements of California Water Code sections 13245 and 13246 and forward it to OAL and the USEPA. The Central Valley Water Board specifically requests USEPA approval of all Basin Plan amendment provisions that require USEPA approval.
4. If during its approval process the Central Valley Water Board staff, State Water Board or OAL determines that minor, non-substantive corrections to the language of the

amendment are needed for clarity or consistency, the Executive Officer may make such changes, and shall inform the Central Valley Water Board of any such changes.

5. Following approval of the Basin Plan amendment by the OAL, the Executive Officer shall file a Notice of Decision with the Secretary for Resources in accordance with Public Resources Code section 21080.5, subsection (d)(2)(E), and California Code of Regulations, title 23, section 3781.

I, PAMELA C. CREEDON, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of a Resolution adopted by the California Regional Water Quality Control Board, Central Valley Region, on 13 August 2009.

PAMELA C. CREEDON, Executive Officer

Attachments: Attachment 1: Non-Regulatory Amendments to Basin Plan

ATTACHMENT 1
RESOLUTION NO. R5-YEAR-XXX
NON-REGULATORY AMENDMENTS TO BASIN PLAN

Revise Basin Plan sections as follows:

CHAPTER II: PRESENT AND POTENTIAL BENEFICIAL USES

Modify Footnote 9 of Table II-1 as follows:

Per State Water Board Resolution No. 90-28, Marsh Creek and Marsh Creek Reservoir in Contra Costa County are assigned the following beneficial uses: REC1 and REC2 (potential uses), WARM, WILD, and RARE

CHAPTER III: WATER QUALITY OBJECTIVES

Modify Table III-1 as follows:

<u>CONSTITUENT</u>	<u>MAXIMUM CONCENTRATION</u>	<u>APPLICABLE WATER BODIES</u>
Boron	2.0 (15 March through 15 September)	San Joaquin River, mouth of the Merced River to Vernalis
	0.8 (monthly mean, 15 March through 15 September)	
	2.6 (16 September through 14 March)	
	1.0 (monthly mean, 16 September through 14 March)	
	1.3 (monthly mean, critical year ^b)	<u>Salt Slough, Mud Slough (north), San Joaquin River from Sack Dam to the mouth of Merced River</u>
	<u>5.8</u> <u>2.0 (monthly mean, 15 March through 15 September)</u>	

Revise page III-3.00, first paragraph under “Chemical Constituents” as follows:

Waters shall not contain chemical constituents in concentrations that adversely affect beneficial uses. The chemical constituent objectives in Table III-1 apply to the water bodies specified. Metal objectives in the table are dissolved concentrations. Selenium, molybdenum, and boron objectives are total concentrations. Water quality objectives are also contained in the Water Quality Control Plan for ~~Salinity~~ the San Francisco Bay/Sacramento-San Joaquin Delta Estuary, adopted by the State Water Board in May ~~1994~~ 1995 and revised in 2006.

Revise “Radioactivity” on page III-6.01 as follows:

... waters designated for use as domestic or municipal supply (MUN) shall not contain concentrations of radionuclides in excess of the maximum contaminant levels (MCLs) specified in Table 64442 of Section 64442 and Table 64443-4 (MCL Radioactivity) of Section 64443 of Title 22 of the California Code of Regulations, which are incorporated by reference into this plan. This

incorporation-by-reference is prospective, including future changes to the incorporated provisions as the changes take effect.

Revise Page III-6.01, paragraph under “Salinity – Electrical Conductivity, Total Dissolved Solids, and Chloride--Delta Waters” as follows:

~~The objectives for salinity (electrical conductivity, total dissolved solids, and chloride) which apply to the Delta are listed in Table III-5 at the chapter's end. See Figure III-2 for an explanation of the hydrologic year type classification system. The objectives in Table III-5 were adopted by the State Water Board in May 1991 in the Water Quality Control Plan for Salinity. See the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary, 2006, for salinity objectives applicable in the Delta.~~

Revise page III-8.00, second paragraph under “Temperature” as follows:

Temperature objectives for COLD interstate waters, WARM interstate waters, and Enclosed Bays and Estuaries are as specified in the *Water Quality Control Plan for Control of Temperature in the Coastal and Interstate Waters and Enclosed Bays of California* including any revisions. There are also temperature objectives for the Delta in the State Water Board's ~~May 1991 Water Quality Control Plan for Salinity~~ 2006 Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary.

Delete Figure III-2 and Table III-5.

CHAPTER IV: IMPLEMENTATION

Revise the introduction to State Water Board Policies and Plans on page IV-8.00 as follows:

~~The~~ There are ten State Water Board adopts water quality control policies and ~~three State Water Board~~ water quality control plans to which Regional Water Board actions must conform.

Revise the third paragraph of Item 13 on Page IV-10.00 as follows:

In response to the Court's decision, the State Water Board adopted the Water Quality Control Plan for Salinity in May 1991. ~~The Delta salinity, temperature, and dissolved oxygen standards contained in the plan are identified in Table III-5 of Chapter III. The May 1991 Plan was superceded in May 1995 when the State Water Board adopted the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary. This Plan was revised in 2006. The State Water Board's Plan includes water quality objectives for salinity, temperature and dissolved oxygen that are applicable in the Delta.~~

Revise Item 14 on Page IV-10.00 as follows:

Nonpoint Source Management Plan and the Nonpoint Source Implementation and Enforcement Policy

In 1988, the State Water Board adopted (Resolution 88-123) a Nonpoint Source Management Plan. The Plan describes three general management approaches that are to be used to address nonpoint source problems. These are 1) voluntary implementation of best management practices, 2) regulatory based encouragement of best management practices and 3) adopted effluent limits.

The approaches are listed in order of increasing stringency. In general the least stringent option that successfully protects or restores water quality should be employed, with more stringent measures considered if timely improvements in beneficial use protection are not achieved. The Regional Water Board will determine which approach or combination of approaches is most appropriate for any given nonpoint source problem.

In December 1999, the State Water Board, in its continuing efforts to control nonpoint source (NPS) pollution in California, adopted the *Plan for California's Nonpoint Source Pollution Control Program* (NPS Program Plan). The NPS Program Plan upgraded the State's first *Nonpoint Source Management Plan* adopted by the State Water Board in 1988 (1988 Plan). Upgrading the 1988 Plan with the NPS Program Plan brought the State into compliance with the requirements of Section 319 of the Clean Water Act and Section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990.

The NPS Implementation and Enforcement Policy, adopted by the State Water Board on 20 May 2004 (State Water Board Resolution No. 2004-0030), explains how the Porter-Cologne Act mandates and authorities, delegated to the State Water Board and Regional Water Boards by the California Legislature, will be used to implement and enforce the NPS Program Plan. The policy also provides a bridge between the NPS Program Plan and the *SWRCB Water Quality Enforcement Policy*.

Add the following description as Item 16 of the "Control Action Considerations of the State Water Board" on page IV-10.01:

Water Quality Enforcement Policy (Enforcement Policy)

The State Water Board adopted the Enforcement Policy on 19 February 2002. The primary goal of this Enforcement Policy is to create a framework for identifying and investigating instances of noncompliance, for taking enforcement actions that are appropriate in relation to the nature and severity of the violation, and for prioritizing enforcement resources to achieve maximum environmental benefits.

Add the following description as Item 17 of the “Control Action Considerations of the State Water Board” on Page IV-10.01:

Water Quality Control Policy for Developing California’s Clean Water Act Section 303(d) List

Pursuant to California Water Code section 13191.3(a), this State policy for water quality control describes the process by which the State Water Board and the regional water boards will comply with the listing requirements of section 303(d) of the federal Clean Water Act. The objective of this policy is to establish a standardized approach for developing California’s section 303(d) list in order to achieve the overall goal of achieving water quality standards and maintaining beneficial uses in all of California’s surface waters.

Add the following description as Item 18 of the “Control Action Considerations of the State Water Board” on Page IV-10.01:

Water Quality Control Policy for Addressing Impaired Waters: Regulatory Structure and Options

Section 303(d) of the Clean Water Act requires states to identify waters within their borders that are not attaining water quality standards. This State policy for water quality control describes the existing tools and mechanisms that the regional water boards will use to address the water bodies listed as impaired under section 303(d) of the federal Clean Water Act.

Add the following description as Item 19 of the “Control Action Considerations of the State Water Board” on Page IV-10.01:

Policy for Compliance Schedules in National Pollutant Discharge Elimination System Permits

Compliance schedules are a discretionary regulatory tool to help companies and public waste water treatment systems that discharge waste into state and federal waters meet changes in pollution control standards. The state issues National Pollutant Discharge Elimination System (NPDES) permits to each of these regulated entities. A compliance schedule in the permit allows a discharger time to change procedures or operations, as well as finance and construct facilities to meet changes in water quality standards. This policy provides guidance on the appropriate use of compliance schedules in NPDES permits.

Revise the “Regional Water Board Waivers” subsection on pages IV-22.00 and IV-23.00 as follows:

State law allows Regional Water Boards to conditionally waive WDRs for a specific discharge or types of discharges where the waiver is consistent with any applicable state or regional water quality control plan and it is in not against the public interest. A waiver may not exceed five years in duration, but may be renewed by a Regional Water Board. Waiver conditions must include monitoring requirements unless the Regional Water Board determines that the discharge does not pose a significant threat to water quality. Prior to renewing any waiver for a specific type of discharge, the Regional Water Board shall review the terms of the waiver policy at a public hearing. At the hearing, the Regional Water Board shall determine whether the discharge for which the waiver policy was established should be subject to general or individual waste discharge requirements. (Water Code section 13269)

~~On 26 March 1982, the Regional Water Board adopted Resolution No. 82-036 to waive WDRs for certain discharges. The types of discharges and the limitations on the discharges which must be maintained if the waivers are to apply are shown in Table IV-1. These waivers are conditional and may be terminated at any time.~~

~~The Regional Water Board adopted two additional conditional waivers, one for retail fertilizer facilities (Resolution No. 89-247) and one for pesticide applicator facilities (Resolution No. 90-34). The waivers and their attached conditions are included in the appendix (Items 31 and 32).~~

~~The Regional Water Board may, after compliance with the California Environmental Quality Act (CEQA), allow short-term variances from Basin Plan provisions, if determined to be necessary to implement control measures for vector and weed control, pest eradication, or fishery management which are being conducted to fulfill statutory requirements under California's Fish and Game, Food and Agriculture, or Health and Safety Codes. In order for the Regional Water Board to determine if a variance is appropriate, agencies proposing such activities must submit to the Regional Water Board project-specific information, including measures to mitigate adverse impacts.~~

TABLE IV-1

WASTE DISCHARGE REQUIREMENT WAIVER AND LIMITATIONS

<u>TYPE OF WASTE DISCHARGE</u>	<u>LIMITATIONS</u>
Air conditioner, cooling and elevated temperature waters	Small volumes which will not change temperature of receiving water more than 1 degree C.

Drilling muds	Discharged to a sump with two feet of freeboard. Sump must be dried by evaporation or pumping. Drilling mud may remain in sump only if discharger demonstrates that it is nontoxic. Sump area shall be restored to pre-construction state within 60 days of completion or abandonment of well.
Clean oil containing no toxic materials	Used for beneficial purposes such as dust control, weed control and mosquito abatement where it cannot reach state waters.
Inert solid wastes (per California Code of Regulations, Section 2524)	Good disposal practices.
Test pumpings of fresh water wells.	When assurances are provided that pollutants are neither present nor added.
Storm water runoff	Where no water quality problems are contemplated and no federal NPDES permit is required.
Erosion from development	Where BMP plans have been formulated and implemented.
Pesticide rinse waters from applicators	Where discharger complies with Regional Water Board guidance.
Confined animal wastes	Where discharger complies with Regional Water Board guidance.
Minor stream channel alterations and suction dredging	Where regulated by Department of Fish and Game agreements.
Small, short-term sand and gravel operations	All operations and wash waters confined to land.
Small, metal mining operations	All operations confined to land, no toxic materials utilized in recovery operations.
Swimming pool discharges	Where adequate dilution exists or where beneficial uses are not affected.
Food processing wastes spread on land	Where an operating/maintenance plan has been approved.
Construction	Where BMPs are used.
Agricultural commodity wastes	Small, seasonal and confined to land.
Industrial wastes utilized for soil amendments	Where industry certifies its nontoxic content and BMPs are used for application.
Timber harvesting	Operating under an approved timber harvest plan.
Minor hydro projects	Operating under water rights permit from State Water Board or Department of Fish and Game agreement and no water quality impacts anticipated.
Irrigation return water (tail water)	Operating to minimize sediment to meet Basin Plan turbidity objectives and to prevent concentrations of materials toxic to fish or wildlife.

~~Projects where application for Water Quality Certification is required~~

~~Where project (normally minor construction) is not expected to have a significant water quality effect and project complies with Dept. of Fish and Game agreements.~~

~~Septic tank/leachfield systems~~

~~Where project has county permit and county uses Water Board Guidelines.~~

Delete the introductory paragraph on page IV-30.00 under "Actions and Schedule to Achieve Water Quality Objectives."

Delete the sections on "Beneficial Use Impairments from Logging, Construction, and Associated Activities," "Dairies" and "Nutrient and Pesticide Discharges from Nurseries" on page IV-37.00.

APPENDIX

Remove Appendices 31 and 32.